REMARKS

Claims 13 – 24 are in the application. Reconsideration and withdrawal of the rejections is requested in view of the changes made to the claims and the following remarks.

Rejection under 35 U.S.C §112

Claims 13-24 stand rejected under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In particular, the Examiner finds that recitation of a narrow range together with a broad range in the same claim renders claims 13 & 20 indefinite. Claims 14 and 21 are amended in view of paragraphs 2 & 3 of the 05/17/05 Office Action. Accordingly, claims 13, 14 – 19 (which depend from claim 13) and claims 20, (21 – 24) which depend from claim 20) are believed to be allowable.

We acknowledge the Examiner's objection regarding the preferred layout for the specification. However due to timing constraints we are unable to provide a specification according to the requirements but will do so shortly.

Rejection under 35 U.S.C §103

Claims 13-24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,593,277 to Adamoli, Jr. et al. (hereinafter "Adamoli") In particular, the Examiner finds that Adamoli teaches a nutrient matrix including biological materials, a binder, a water retentive agent and plant nutrient.

Applicant respectfully reminds the Examiner of the requirements posited by MPEP 2143.03 that "[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d

981, 180 USPQ 580 (CCPA 1974). All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)." (emphasis added). The Examiner has not made, and indeed cannot make, a *prima facie* showing that the nutrient matrix comprising biological materials, a binder, a water retentive agent and plant nutrient is taught or suggested by Adamoli. Applicant therefore submits that claims 13-24 are allowable and respectfully requests the Examiner to reconsider and pass the claim to issue.

The nutrient matrix of the claimed invention provides a water retentive agent of 0.3-2 wt%. The water retentive agent allows absorption of water, especially over arid, semi-arid or desertificated land. Adamoli's cellulose-containing aggregates contain no such water retentive agent. Rather, Adamoli discloses "aggregates of cellulose-containing particles" to be used as a carrier for additivies such as "insecticides, herbicides, fertilizers and nutrients." (See, e.g. col. 2:5-25). Thus, the claimed element, a water retentive agent, is entirely absent from Adamoli et al. (U.S. Patent No. 6,593,277). Therefore, Adamoli cannot teach or disclose a nutrient mix including biological materials, a binder, a water retentive agent and plant nutrient, as recited in claims 13-24.

The Examiner also finds that Alamoli teaches using various amounts of materials including amounts as a percentage weight. Therefore, by applying routine skill to determine the optimum or workable ranges, it would have been obvious to one skilled in the art to form the nutrient mix of the claimed invention. However, the Examiner has offered no detail as to how exactly the skilled person would go about "discovering" the claimed ranges given the teachings of Adamoli. Instead, the Examiner appears to have

based his conclusion entirely on the presumption that one skilled in the art would apply the cellulose-aggregates specifically disclosed in Adamoli to be useful for controlling "termite infestation," and "plant growth control", to form a nutrient matrix for use in a non-plowing method for establishing vegetation as disclosed in the claimed invention.

Adamoli does not teach or suggest use of its cellulose-aggregates for establishing vegetation. Instead, Adamoli discloses a method suitable for horticultural or insecticide uses on small areas of land to "promote revegetation of denuded areas, such as highway right of ways," or as part of "building insulation" to prevent "infestations of roaches, termites, ant or other insects in [a] building." (See col.5:65-col.6:15; and col. 7:25-50). To accomplish this, Adamoli teaches use of herbicides such as "Ornamental weed Grass (Pendimethalin), XL 2G (Benefrin+Oryzalin), 0—0 (Oxyfureofen+Oxidiazon), Rout (Oxyfurofen+Oxidiazon), and Pennant 85.1 (Metolachlor)" () or toxins such as "anti-termite agents....US Borax (Boric Acid), Zeneca Fireban (Tefluthrin), and FMC Talstar (Bifenthrin). (See col.7:29-34) Therefore, Adamoli specifically *teaches away* from the method of establishing vegetation using a nutrient matrix as disclosed in the claimed invention.

In view of the foregoing, it is submitted that the claims are in condition for allowance. A Notice of Allowance is requested.

Dated: November 17, 2005

Respectfully submitted,

PERKINS COIE LLP

Customer No. 34055
Perkins Coie LLP
Patent - LA
P.O. Box 1208
Seattle, WA 98111-1208
Phone: (310) 788-9900
Fax: (206) 332-7198

By: _____
Mimi H. Chiang
Reg. No. 46,618